THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.22756 of 1998

ORAL ORDER:

This writ petition is filed seeking a Mandamus declaring the action of the respondent company in making payment of gratuity amounts to the petitioner after 15 months from the date it became payable to him consequent on attaining the age of superannuation and even after the expiry of minimum stipulated period of 30 days from the date of superannuation as arbitrary, illegal and violative of provisions of Gratuity Act, 1972 and consequently direct the respondent to pay interest @ 24% per annum for the delayed period in payment of gratuity.

It appears, petitioner retired from service of the Respondent Company as Deputy Engineer on 31.3.1997. His grievance is that the gratuity amount of Rs.1,00,000/- due to him was paid on 11.7.1998 after 16 months of his retirement. As per law, the gratuity amount shall be paid within 30 days from the date of retirement of an employee/officer. Therefore, he is entitled for interest @ 24% on the gratuity amount for 16 months.

A detailed counter affidavit has been filed by the respondent denying the allegations made by the petitioner stating that the writ petition itself is not maintainable under Article 226 of the Constitution of India since the grievance of the petitioner in respect of payment of gratuity can be worked out under the provisions of Gratuity Act and the rules made thereunder. The Payment of Gratuity Act provides the aggrieved party to prefer appeal against the order made by the Controlling Authority. Thus, the Payment of Gratuity Act is a self-contained Act and all the claims arising under the said Act can only be adjudicated before the Authority constituted under the said Act and the writ petition straightaway cannot be maintained. It is further stated that the respondent company is passing through a severe financial crisis and with great difficulty, the company is able to raise necessary

finance to meet its day to day expenditure. The company having various divisions and one of them is Machine Tool Division. Each division is considered as an independent entity for the purpose of profit and loss made by the said division. In fact the Machine Tool Division is one of the divisions, which is still functioning and is able to carry on some work. The company, as such, is not in a position to meet various statutory and non-statutory liabilities and with great difficulty is able to pay salaries. The company is also not able to disburse the salaries to those in employment in time. In view of this critical financial position, the company could not meet its obligation of paying gratuity to some of the employees who had retired from service, in time. However, the company made its efforts to release the gratuity to the employees who had retired from service in a phased manner as and when it could generate the necessary amount. Therefore, there was some delay in paying the gratuity amount to the petitioner. Therefore, petitioner is not entitled for any interest as the delay was not caused wantonly or deliberately, but only due to non-availability of funds.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the material made available on record.

I am of the opinion that firstly the petitioner has got an effective alternative remedy under the provisions of Payment of Gratuity Act itself and secondly whether the petitioner is entitled for interest @ 24% for the delayed payment under the Gratuity Act and whether the delay was wanton or deliberate is a pure question of fact to be decided by the competent authority after permitting the parties to lead evidence both oral and documentary. Though the respondent has admitted that there was some delay, but has explained that the said delay was only due to critical financial position of the company, and the gratuity amounts are being paid to the retired employees in a phased manner. Whether the delay was wanton or deliberate cannot be decided in this writ petition. Therefore, the writ petition

is devoid of merits and liable to be dismissed.

Accordingly, the writ petition is dismissed. However, this will not preclude the petitioner from approaching the authorities under Payment of Gratuity Act and work out his remedies as available under law. No order as to costs.

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C.V.RAMULU, J

Date: 20.6.2007

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W.P.No.22756 of 1998

20.6.2007

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.22756 of 1998

Date: 20th June, 2007

Between:

J.C.Thirupal

.. Petitioner

And

H.M.T. Ltd., (Machine Tool Division),
represented by its General Manager (Pers).

.. Respondent